

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

7

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE LEONARD DAVIS,
UNITED STATES DISTRICT JUDGE

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A P P E A R A N C E S

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13 (SEE SIGN-IN SHEETS DOCKETED IN THE MINUTES OF THIS CASE.)

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18 COURT REPORTER: MS. SHEA SLOAN
211 West Ferguson
19 Tyler, Texas 75702

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22 produced by a Computer.

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1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 All right. Ms. Ferguson, if you will call the case,
4 please.

5 THE CLERK: Court calls Case No. 6:10cv329,
6 AdjustaCam v. Amazon.com, et al.

7 THE COURT: Announcements?

8 MR. SPANGLER: Your Honor, Andrew Spangler on behalf
9 of the plaintiff, and John Edmonds, this morning.

10 THE COURT: Very good.

11 MR. SPANGLER: We are ready to proceed.

12 MR. CRAFT: Good morning, Your Honor. Brian Craft
13 and Steve Daniels here for Amazon.com, Inc., CDW Corporation,
14 CDW, Inc., Creative Labs, Fry's Electronics, Hewlett-Packard
15 Company, Micro Center, Office Depot. I'm also here announcing
16 for Sakar International. Mr. Daniels may represent some
17 others that I have missed.

18 MR. DANIELS: Your Honor, I believe the only one
19 missing from the list was Best Buy. I didn't hear that one.
20 But, otherwise, that is it.

21 THE COURT: How many defendants in all do you
22 represent? Do you know approximately?

23 MR. DANIELS: I represent eight defendants.

24 THE COURT: All right. Very well.

25 MS. DACUS: Your Honor, Shannon Dacus and Scott

1 Partridge here representing Dell.

2 MR. PARTRIDGE: Good morning, Your Honor.

3 THE COURT: Who do you represent?

4 MS. DACUS: Dell.

5 THE COURT: Dell, okay.

6 MR. BUFE: Good morning, Your Honor. John Bufo and
7 Mike Harris for the Blue Microphones Defendants; and also John
8 Bufo for J&R Electronics. Ready.

9 THE COURT: Thank you.

10 MR. AYERS: Your Honor, Robert Ayers here for Kmart,
11 Sears, and Overstock. All Sears entities, Your Honor.

12 MS. GUNTER: Debbie Gunter and Chris Cuneo for
13 Newegg and Rosewill.

14 MS. STANDISH: Good morning, Your Honor. Allison
15 Standish Miller for Cobra Digital.

16 MR. PHILBIN: Good morning, Your Honor. Phillip
17 Philbin for Digital Innovations.

18 MR. DONAHUE: Good morning, Your Honor. David
19 Donahue and Michael Smith for Radio Shack.

20 MR. SMITH: Michael Smith also for Wal-Mart, Your
21 Honor.

22 MR. HILTON: Your Honor, Zachary Hilton and Jeff Lee
23 for Auditek Corporation.

24 MR. LEE: Good morning, Your Honor.

25 MR. HAMMOND: Good morning, Your Honor, Herbert

1 Hammond for Gear Head.

2 MR. AINSWORTH: I'm just visiting, Your Honor.

3 THE COURT: Just visiting. It is good to have you.

4 We are here for the Status Conference. Let me start
5 by asking plaintiff to go first and just make an opening
6 statement and any suggestions that you have on how this case
7 could be best managed, and then I will hear from defendants if
8 they have anything.

9 MR. EDMONDS: Yes, Your Honor. John Edmonds. I
10 will be speaking on behalf of the plaintiff.

11 THE COURT: All right, Mr. Edmonds.

12 MR. EDMONDS: If I can bring a couple of the webcams
13 with me here.

14 THE COURT: Okay. I see them all staring at me.

15 MR. EDMONDS: They are not plugged in, Your Honor.

16 THE COURT: They are not loaded. Okay. That's
17 good.

18 MR. EDMONDS: In terms of the complexity of this
19 case, I wanted to bring the Court some representative samples
20 of the webcams. Most of them look a lot like these two
21 (indicating) that I am holding up. This is from iHome, this
22 is from Creative.

23 The one, the Mi webcam there has kind of a clip,
24 slightly different. And then the one that is really kind of
25 an outlier but I wanted the Court to see it, is this Minoru

1 that looks kind of like an alien.

2 But I think it is important for the Court to
3 appreciate the devices because in terms of the scope of
4 discovery in this case on the technical side, we can -- the
5 plaintiff can determine infringement from a visual inspection
6 of the device. So the majority of the discovery in the case
7 is just going to be on damages; profits, costs, revenues,
8 projections, market analysis, things of that sort.

9 So, you know, this is not a case that is going to
10 require source code. It is not going to require engineering
11 drawings. It is not going to require a lot of the things that
12 typically burden cases and run up the expenses.

13 So in terms of potentially streamlining it, the
14 plaintiff's suggestion would be that we opt out of the Court's
15 mandatory disclosures and we just do request for production.
16 And the plaintiff is certainly willing to try to narrow the
17 scope of the request to what is reasonably at issue in the
18 case, which is primarily the scope of the infringement and
19 damages. I think it is going to be very manageable from that
20 perspective.

21 In terms of the number of defendants, we have a few
22 defendants here who are in the process of exiting, either from
23 settlements or some of them have just come and said, look, our
24 sales are so small will you just cut us loose? If the sales
25 are tiny, then we are not going to burden the court system

1 with that.

2 So I count 25 real parties in interest here, 10 of
3 whom are manufacturers and 15 of whom are retailers. So --

4 THE COURT: How many did you sue initially in this
5 case?

6 MR. EDMONDS: I believe initially we had
7 approximately -- there are some defendants it was confusing
8 who was the real party in interest, so affiliates were sued.
9 But when you filter out the affiliates, I believe we had
10 approximately 35 defendants initially.

11 THE COURT: And then in the other case, the 644,
12 there are not many defendants in that case, I don't believe.

13 MR. EDMONDS: In the 644 case -- there are two
14 defendants in that case --

15 THE COURT: How many?

16 MR. EDMONDS: -- who overlap with this case because
17 they are foreign affiliates.

18 THE COURT: Okay.

19 MR. EDMONDS: And they were holding up this case, so
20 they are in the other case.

21 THE COURT: Okay.

22 MR. EDMONDS: In that case we have 15 defendants, 2
23 of whom overlap with the defendants in this case, 7 of whom
24 are manufacturers of webcams, the rest of whom are resellers
25 of webcams. Many of the manufacturers in the, what I call

1 AdjustaCam 2, which is the 644 case, are foreign
2 manufacturers; and we are still getting things translated for
3 them, as far as I know. That case is going nowhere fast
4 because of the presence of the foreigners.

5 THE COURT: How many foreign defendants out of
6 the -- are foreign out of the 15? Most of them or...

7 MR. EDMONDS: No, I count 3 of them. There is Trust
8 International. There is Sakar. And there is Creative.

9 THE COURT: So only three of them are foreign
10 defendants?

11 MR. EDMONDS: Yeah, actually I think KYE, so I want
12 to say 4.

13 THE COURT: What is your thought as to maybe
14 consolidating -- would it serve any useful purpose to
15 consolidate the cases but maybe carve out the foreign
16 defendants that will take you more time to get service on?

17 MR. EDMONDS: That would be fine from the
18 plaintiff's perspective. If it streamlines, we are all in
19 favor --

20 THE COURT: Have you got service on the other 12
21 defendants already?

22 MR. EDMONDS: I believe so. Some of them -- since
23 the case is going nowhere fast -- were generous with
24 extensions. Why hold their feet to the fire when the
25 foreigners are still out there in the Hague or what have you?

1 I can check on it. If they haven't, I'm sure they will be
2 served soon.

3 THE COURT: All right.

4 MR. EDMONDS: So from that perspective, I think we
5 can streamline discovery. The plaintiff is certainly willing
6 to consolidate as the Court sees fit, and we just don't see
7 this as an overly burdensome case.

8 What is different about this case, I think, than
9 many of the large cases the Court sees, is many of these
10 defendants are intertwined in many ways.

11 You have resellers like Amazon and Best Buy, Office
12 Depot who resell a lot of webcams from various manufacturers
13 in the case; Fry's Micro Center. So trying to unsort those,
14 doesn't make much sense. It makes a whole lot more sense to
15 have these defendants together because we can take care of all
16 of the common issues all at once.

17 From our perspective since these devices are --
18 infringement is determinable on really a visual inspection of
19 it, it is not an overly complicated case from anyone's
20 perspective; and the presence of this many parties is not
21 going to overly complicate things for the Court. If anything,
22 it simplifies matters so we can address all this at once.

23 THE COURT: Okay. Thank you.

24 All right. Defendants?

25 MR. DANIELS: Good morning again, Your Honor. I'm

1 Steven Daniels. Yeah, I believe to some extent what Mr.
2 Edmonds says about the infringement issue is correct. It is
3 not a complex invention. There, however, are significant
4 differences among the various accused products that are going
5 to require a lot of explication and a lot of discovery.

6 In their preliminary infringement contentions they
7 have kind of lumped a lot of cameras together that are not
8 alike that is going to require a lot of unpacking.

9 But really it is probably correct that the bulk of
10 the discovery here will be related to damages. That may be
11 streamlinable, but not if the claims against the resellers are
12 not stayed.

13 THE COURT: Not what?

14 MR. DANIELS: The claims against the resellers are
15 not stayed. If they are taking damages discovery from the
16 resellers of all of the same cameras that the manufacturers
17 and distributors are accused on, that is going to drastically
18 increase the cost and complexity of damages discovery in this
19 case.

20 So the defendants' first proposal in terms of
21 streamlining this case, is to grant our motion to stay the
22 claims against the resellers. And if you are going to
23 consolidate the case, I think it would make sense to extend
24 that stay to the reseller defendants in the second-filed case
25 as well?

1 THE COURT: Are you making this motion on behalf of
2 just the resellers or all of the defendants?

3 MR. DANIELS: So the motion was primarily from the
4 perspective of the manufacturers attempting to stay resellers
5 of their products, but a number of the resellers joined the
6 motion as well. And I represent both manufacturers and
7 resellers. So on behalf of my clients, I am moving to stay
8 the claims -- I want to stay all claims with respect to
9 resellers --

10 THE COURT: How will the plaintiff then sort out --
11 I take it from the resellers they are seeking to identify
12 whether they have got all of the manufacturers or not. How
13 will they sort that out?

14 Or let me ask plaintiffs, what is your take on the
15 suggestion he just made? I don't want to speak for you.

16 MR. EDMONDS: Thanks, Your Honor. That is very
17 problematic from our perspective. What they are calling
18 manufacturers, some of them are manufacturers, some of them
19 are not manufacturers. They are what are called kind of
20 upstream --

21 THE COURT: Middlemen.

22 MR. EDMONDS: -- consolidated -- they have a name
23 for it.

24 From our perspective, some of these webcams the
25 retailers, all their webcams have been sold in the U.S., so we

1 know that. The manufacturers, it is not clear to us that they
2 even know which of their webcams have made it into the U.S.,
3 so we are going to need to get discovery from the retailers
4 just to find out the extent of that.

5 We also -- there have been some dueling papers filed
6 with the Court. We are going to have to have discovery from
7 the retailers in this case in order to do a proper damages
8 calculation.

9 We provided the Court with a declaration from our
10 damages expert Mr. Bratic. We provided the Court with legal
11 authorities, including Georgia-Pacific factors that say this
12 is necessary information for us.

13 So what they are proposing is the retail defendants
14 would be stayed, and we would have to take third-party
15 discovery from parties to the case by issuing subpoenas in all
16 these jurisdictions that they are from.

17 And they have already put the Court on notice that
18 they oppose the discovery; that they don't think we need this
19 information.

20 So what that means is the Court would -- we would
21 be -- set out to take opposed discovery by way of Rule 35
22 subpoenas from parties to the case. We would have to enforce
23 these subpoenas in courts throughout the land. Each of these
24 courts would now be burdened with determining the relevance of
25 this information and reinventing the same wheel.

1 So from our perspective, this Court should decide
2 what is relevant and what should be produced. And it makes
3 zero sense from judicial efficiency to carve parties to the
4 case into third parties and force us to take third-party
5 discovery from them.

6 THE COURT: Who are you going after as far as your
7 settlement strategy, both retailers and the manufacturers?
8 Have you settled with both so far? And then what is your --

9 MR. EDMONDS: A good example would be Jasco, who --
10 you may not have heard of Jasco, but they make Kodak-type
11 products, Kodak webcams. We have settled with Jasco. That
12 takes the Kodak webcams off the table with respect to the
13 retailers. So if the manufacturer will settle with us and
14 that makes it that much easier. If there is a retailer who is
15 only tied to that manufacturer, then they get the benefit from
16 it, they would drop out of the case.

17 But for those manufacturers that don't want to
18 settle with us, then our strategy is both are infringers and
19 both are jointly and severally liable for it.

20 And from our perspective of the market, we
21 understand that the margins from the retailers are
22 significantly higher than those for the manufacturers. So it
23 is important from the plaintiffs' damages perspective that we
24 are able to have -- capture that as part of our royalty model
25 and have the information as part of our expert to factor it

1 in.

2 THE COURT: Your Honor, we have submitted authority
3 for the proposition that the discovery from the resellers
4 related to damages is not relevant in an analysis like this.

5 However, it is important to recognize here what we
6 are seeking is a stay as to the resellers. So they are still
7 subject to the jurisdiction of the Court. If AdjustaCam is
8 able to make a showing that they require some discovery from
9 the resellers, the stay could be lifted for that limited
10 purpose. So it is not that they need to take third-party
11 discovery throughout the country to get discovery if they can
12 show they need it.

13 But the fact of the matter is they don't need it.
14 In a traditional reasonable royalty analysis, if you look to
15 the way the licensing would go in a hypothetical negotiation,
16 AdjustaCam wouldn't go to Best Buy, Wal-Mart, Office Depot,
17 CDW, Amazon and try to get licenses from each of them for
18 cameras made by HP or by Creative, for example.

19 So the hypothetical negotiation would be done with
20 the manufacturers. And it is their profits and their margins
21 that are relevant to that analysis, not those of the
22 resellers.

23 So we don't think it is relevant. If it is
24 relevant, they can take that discovery here. The stay
25 wouldn't block that.

1 THE COURT: What other suggestions do you have?

2 MR. DANIELS: Well, we don't currently see a claim
3 construction issue that would simplify the case drastically,
4 but we are open to possibly doing an early claim
5 construction.

6 But our primary thing would be to -- for the Court
7 to entertain an early motion for summary judgment on whether
8 the plaintiff is entitled to pre-suit damages in this case.

9 They have two licensees that have been licensed
10 since 2001; Phillips and Logitech. Logitech is a manufacturer
11 of many, many webcams that are still on sale. And the
12 Logitech webcams that we have inspected are not marked with
13 the patent number.

14 So we think if they can make the showing that they
15 have been marking continuously and consistently throughout the
16 time period since the licenses were entered, then they could
17 defeat summary judgment. But we think it is going to be a
18 clear issue for summary judgment where we could knock out the
19 pre-suit damages.

20 There is also a laches issue here because of the
21 extended delay in filing this suit that gives rise to the
22 presumption of laches, which they would have to overcome,
23 which is also an issue ripe for summary judgment.

24 We think that if that motion is successful, it will
25 make the case very ripe for settlement. It will also, in

1 fact, knock out a lot of the products at issue that have been
2 discontinued; that have not been sold since the suit was
3 filed. Some of the manufacturers who are now defunct and who
4 have been dismissed from this case, those products would be
5 taken off the table. So it would greatly simplify the issues.
6 So that is our second proposal.

7 THE COURT: Could I get a response to that?

8 MR. DANIELS: I'm sorry --

9 THE COURT: Excuse me just a moment. I was going to
10 get a response.

11 MR. DANIELS: Yes, sir.

12 MR. EDMONDS: Your Honor, I don't want to speak out
13 of turn without talking to my client. In terms of the
14 pre-suit damages, I'm not sure we would even oppose that
15 motion from them. I'm not sure that is an issue that is so
16 hot for the Court to decide. But if it is something they want
17 to tee up by way of a motion for summary judgment, there is
18 nothing to stop them from doing that today.

19 In terms of singling out laches, I guess my reaction
20 to that is that laches is a very factual affirmative defense
21 that requires an unreasonable delay, it requires prejudice.

22 So, I mean, if they want to file it tomorrow, they
23 are certainly entitled to; but we would also be entitled to
24 discovery from them as to the prejudice they have suffered
25 that would give rise to laches. So I think it would be

1 followed by a 56(f) motion until we got some discovery on it.

2 But as I understand it, the Court's discovery
3 deadline is the deadline. There is nothing to preclude the
4 parties from filing a motion beforehand. We just need to make
5 sure discovery progresses to a point to where they are fairly
6 heard.

7 MR. DANIELS: Just to clarify that. The effect of a
8 successful motion on marking will be the same as laches, so if
9 we knock out pre-suit damages on marking, we don't need to
10 address the laches issue at all, so I think I would see them
11 as sort of --

12 THE COURT: Have y'all discussed this with the
13 plaintiff prior to this, this marking issue?

14 MR. DANIELS: No, Your Honor, but we did raise it in
15 our papers on the motion to stay.

16 THE COURT: Okay. Well, let me just encourage the
17 parties -- I mean, I thought I just heard him say they might
18 not oppose that, so, you know, part of what I am trying to do
19 in these cases is if y'all will talk and try to get it down to
20 where we can get the case resolved, you know, rather than
21 having to come in here and discuss it, you ought to try to
22 discuss it beforehand.

23 MR. DANIELS: Your point is well-taken, Your Honor.
24 I just would point out that in their papers they said they
25 were seeking damages going back 6 years, so we had no reason

1 to believe that they had given up on pre-suit damages.

2 He just said today for the first time that if the
3 sales of some of the parties are tiny, they will cut them
4 loose from the case, which if we cut our pre-suit damages for
5 a lot of these small parties, that is going to be the case.
6 So I'm surprised to hear this this morning, and I agree we
7 should have spoken about it before.

8 But what we would like to do then --

9 THE COURT: I do want to say that what Counsel said
10 is -- he couched it. He would have to discuss it with his
11 client. And that is one thing I want to do in these
12 conferences is to allow the parties to talk candidly without
13 fear of, "oh, you said." So, generally, what is said here,
14 I'm not going to be inclined to have somebody try to quote
15 back to somebody during the trial or whatever.

16 MR. DANIELS: Understood, Your Honor.

17 The other thing we would like to do is following a
18 successful motion on pre-suit damages, if it is successful or
19 actually just following that motion, period, we would like to
20 propose the Court require a mandatory mediation to take place
21 at that point to settle out whatever claims may have been
22 either knocked out or minimized as a result of the motion.

23 THE COURT: I take it plaintiff would not be opposed
24 to a mandatory mediation?

25 MR. EDMONDS: Not at all, Your Honor.

1 MR. DANIELS: Okay. And then the other point we
2 wanted to make is there are actually two petitions for
3 reexamination of this patent that have been filed with the
4 Patent Office. One of them has been granted, and the reexam
5 has been initiated. The other one, it is my understanding,
6 there has not been action on yet.

7 But those two proceedings could act as a proxy, we
8 think, for the validity challenge that the defendants are
9 likely to make or a part, at least, of the validity challenge
10 that the defendants are likely to make in this case. So we
11 would propose a stay of the case pending the outcome of the
12 reexams.

13 I know typically Your Honor is not open to stays of
14 this sort; but in a case like this where we are trying to
15 streamline issues, that may be a good proxy for judicial
16 process.

17 THE COURT: Okay. It is not, but it's okay.

18 MR. DANIELS: All right. Fair enough. Well, that's
19 all I have to say.

20 THE COURT: Mr. Partridge?

21 MR. PARTRIDGE: Yes, Your Honor. If I may?

22 THE COURT: Certainly.

23 MR. PARTRIDGE: I just have a couple of points. I
24 wanted to try to put this in some perspective for the Court.
25 I shutter at the thought of having to deal with discovery,

1 requests for production, and the like, on damages when I hear
2 the plaintiff say, oh, we have got George-Pacific and all of
3 the factors and we have hired Mr. Bratic and we need
4 information about margins; this, that and the other thing.

5 That is among the most burdensome of the kind of
6 discovery one faces. I represent Dell, Your Honor. And if we
7 were to agree that there are no pre-suit damages here, and I
8 haven't -- I have gotten this information from one of my
9 associates who knows Dell well, and I have reasonable faith in
10 these numbers; but our post-suit sales units I believe are
11 1,555 units.

12 That is not a lot of units for a product that sells
13 for anywhere between, as I understand it, 7 or 8 bucks a unit
14 up to 30 or so dollars a unit. I don't want to have my client
15 go through damages discovery of the type that I have seen in
16 cases like this, which would be an extraordinary cost compared
17 to this.

18 So my suggestion would be that instead of being
19 subject to damages discovery from the plaintiff, that if we
20 were to have some sort of an agreed-upon scope of damage
21 discovery like how many units have you sold, what the revenues
22 have been, and who do you buy from; and that is it. And if
23 they are going to agree that there are no pre-suit damages,
24 let's provide that information and have a mediation and see
25 how many parties we can get rid of, rather than going through

1 much more than that.

2 I understand there is a marking issue. Quite
3 honestly, I am not into this far enough to know the validity
4 of that or not because the numbers that are in this case from
5 the standpoint of my client are not enough for us to engage in
6 an awful lot of evaluation at this point.

7 So we would like to -- and I think this is true of
8 other defendants in the case -- to get past much in the way of
9 discovery, see if we can get this thing resolved because from
10 our standpoint this is really a cost-of-litigation issue and
11 nothing more.

12 Thank you, Your Honor.

13 THE COURT: Thank you.

14 Response to that suggestion?

15 MR. EDMONDS: Yes, Your Honor. I guess there is a
16 question here of at what point does the Court need to
17 micromanage this or at what point should the process take care
18 of itself?

19 We have given the Court an in-camera submission of
20 settlements to date. In our conversations at a high level,
21 and without divulging anything I am not supposed to with those
22 defendants, in large part is we asked for their unit
23 royalties, we asked for their revenues, and we have given them
24 numbers that are tied to the unit royalties.

25 So the conversation that Mr. Partridge just

1 described, it is unfortunate we haven't had that conversation
2 yet with Dell; but for those defendants who have been
3 interested in that conversation, we have been able to resolve
4 this case on reasonable terms that are tied to their sales.

5 It is not just some number we picked out of the air.

6 So I think that process works on its own and will
7 work on its own. Everyone who is in this room, if you have
8 small sales, we should talk. There is a unit royalty I can
9 give you. And that can take care of itself.

10 If it doesn't take care of itself, then I guess that
11 is what the discovery process is for. They have infringed the
12 patent. I think my client is entitled to the discovery the
13 Federal Rules permit in terms of us having to prove our case
14 if they don't want to pay an agreed-upon royalty.

15 THE COURT: Any response, Mr. Partridge?

16 MR. PARTRIDGE: The only thing I would say -- and
17 like so many lawyers in practice in this field today, we are
18 all juggling 10,000 things and so I am not pointing any
19 fingers at Mr. Edmonds when I say this -- but my partner Roger
20 Fulghum has tried to have that conversation multiple times
21 before this hearing today.

22 Now that we have had this hearing and now we know
23 that those with tiny sales are out, and now we know that they
24 are thinking in terms of, perhaps -- and he has not committed
25 to this and we need to talk about it -- that no pre-suit

1 damages would come into play. If all of that is true, then
2 there are probably a lot of defendants in this case that
3 should go out.

4 In order to have a structured resolution coming out
5 of this hearing, it still seems to me to make sense that for
6 those that can't work this out in the next couple of weeks and
7 get out, that there ought to be a limited disclosure with
8 respect to damages and mediation before a mediator to see if
9 we could get rid of additional parties to narrow this case.

10 THE COURT: Let me ask plaintiff, is plaintiff
11 opposed to an initial round of disclosures that would
12 basically be number of units, revenue, and who they are bought
13 from?

14 MR. EDMONDS: Not at all, Your Honor. We encourage
15 that.

16 THE COURT: How soon can you make the disclosure,
17 Mr. Partridge?

18 MR. PARTRIDGE: I would think, Your Honor, we could
19 do this in the next two weeks; probably less than that. But,
20 you know, I would think it would be a very short period of
21 time.

22 THE COURT: Can you do it for both -- for the entire
23 period of sales from the issuance of the patent?

24 MR. PARTRIDGE: Yes, Your Honor.

25 THE COURT: Okay. Is there any defendant that

1 cannot do that within two weeks?

2 MR. DANIELS: Your Honor, I can't agree to that on
3 behalf of my reseller defendants. I can certainly agree to it
4 on behalf of the manufacturers and distributors. But, again,
5 we think that the claims against the resellers should be
6 stayed in this case; and that it doesn't make sense to have
7 duplicative discovery --

8 THE COURT: Your motion for stay is denied.

9 Can the resellers provide that information within
10 two weeks?

11 MR. DANIELS: I will have to speak with them. They
12 are accused on a large number of products from different
13 manufacturers, and I'm not sure --

14 THE COURT: I would think they could just run that
15 out of their computers, couldn't they?

16 MR. DANIELS: I have been surprised, Your Honor.

17 THE COURT: Excuse me?

18 MR. DANIELS: I have been surprised. That is not
19 necessarily true. In many cases the -- with my reseller
20 clients they have been accused on cameras that they have, in
21 fact, sold no units of but that are listed on their websites
22 because they are Internet sellers and they don't maintain
23 inventory, they don't get one until they sell them.

24 THE COURT: Is there anyone other than Mr. Daniels
25 on behalf of his reseller clients that cannot do that within

1 two weeks?

2 MR. PHILBIN: Your Honor, Phillip Philbin on behalf
3 of Digital Innovations. I am just going to have to check. I
4 may have some of the same issues Mr. Daniels referred to.

5 THE COURT: All right.

6 MR. DONAHUE: Your Honor?

7 THE COURT: Yes.

8 MR. DONAHUE: David Donahue on behalf of RadioShack.

9 Some of my client representatives are out of the office for
10 the next week, so if I could get 3 or 4 weeks, that would make
11 me more confident I could do it fully and properly.

12 THE COURT: Well, let me do this -- here is where I
13 am on all these issues: I have expressed my opinion as to
14 staying the resellers. I think at least at this stage they
15 should provide the discovery requested regarding damages.

16 I'm going to grant leave for defendants to file a
17 marking motion for summary judgment immediately. I would
18 encourage you to communicate with the plaintiff and see if it
19 is necessary or if an agreed motion can be entered.

20 I am going to -- not going to look at laches at this
21 point.

22 I will -- do you have a mediator in this case yet?

23 MR. DANIELS: No, Your Honor.

24 THE COURT: I am going to go ahead and -- do you
25 have a request as far as mediator? Have y'all discussed that?

1 MR. EDMONDS: I believe we did. We submitted all of
2 the papers for a discovery order and for a docket control
3 order in connection with that.

4 THE COURT: Okay. That should be --

5 MR. DANIELS: No. You are probably right --

6 MR. EDMONDS: If we didn't, we will.

7 MR. DANIELS: That's ancient history. I'm sorry.

8 THE COURT: All right. So we need a mediator. I
9 would like an early mandatory mediation after these
10 disclosures have been made.

11 I am going to deny the motion with regard to the
12 reexam.

13 After this request is done, I want y'all to meet and
14 confer, modify your discovery order and docket control order
15 consistent with what I have just outlined for, hopefully, an
16 early resolution of this case that will be less expensive for
17 both sides to get it down to, really, what is at issue and
18 hopefully get the case settled.

19 If not, then the case will move forward under its
20 normal discovery order and docket control order. But let's
21 take 60 days, and basically see if we can get this case
22 resolved in that time. I think it would be to everyone's
23 benefit.

24 Anyone have any strenuous objections to that plan?
25 Everybody live with it?

1 MR. CRAFT: Your Honor, one thing. I may be
2 incorrect, but at the first status conference I'm not sure if
3 the Court ever issued any dates.

4 THE COURT: Yes, let me give you dates.

5 MR. CRAFT: I don't know if there has been a
6 discovery --

7 THE COURT: The Markman date, if you don't get it
8 resolved, will be February 9th, 2012; pretrial on December
9 18th, 2012; jury selection on January 7th, 2013; and jury
10 trial on January 14th, 2013.

11 Anything further?

12 MR. EDMONDS: No. Thank you for your time, Your
13 Honor.

14 THE COURT: I think this has been productive. I
15 appreciate both sides' suggestions. I hope you can get it
16 resolved as quickly and as inexpensively as possible for both
17 sides.

18 Be adjourned.

19 (Hearing concluded.)

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1 C E R T I F I C A T I O N

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3 I certify that the foregoing is a correct transcript from the
4 record of proceedings in the above-entitled matter.

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6

7 /s/ Shea Sloan

8 SHEA SLOAN, CSR, RPR
OFFICIAL COURT REPORTER
9 STATE OF TEXAS NO. 3081

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